IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 82 OF 2005

Shri Antonio Lourenco Costa,
resident of House No.22,
Dovorlim, Navelim, Goa. ..... Petitioner.

V/s.

1. State of Goa, through its
Chief Secretary, having office at
Secretariat, Porvorim, Bardez, Goa.

2. State Election Commission,
having Office at
Junta House, Panaji, Goa. ..... Respondents.

Mr. Girish Sardessai, Advocate for the petitioner.

Mr. S.S. Kantak, Advocate General with Ms. T. Rane, Addl. Govt. Advocate for respondent No.1.

Mr. V.P. Thali, Advocate for respondent No.2.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

DATE : 2nd March, 2005.

ORAL ORDER : (Per LAVANDE, J.)

Heard Mr. Sardessai, learned Counsel for the petitioner, Mr. Kantak, learned Advocate General with Ms. T. Rane, Addl. Govt.

Advocate for respondent No.1 and Mr. Thali, learned Advocate for respondent No.2.

2. By this petition, the petitioner seeks writ of mandamus against respondent No.1, directing respondent No.1 to reserve 33.57 % i.e. 7 seats for Scheduled Tribes and women belonging to the Scheduled Castes in the South Goa Zilla Panchayat.

3. Mr. Sardessai, learned Counsel appearing for the petitioner submitted that as per the population figure available with the Director of Social Welfare Department, the rural population in the North Goa Zilla Panchayat is 4,16,824, out of which 60,285 is the population of Scheduled Tribes which constitutes 14.46 % and accordingly reservation of 4 seats in the North Goa Zilla Panchayat is justified.

4. According to the petitioner, the rural population of South Goa Zilla Panchayat is 2,60,267, out of which 87,238 is Scheduled Tribes and the same constitutes 33.5 % and, therefore, respondent No.1 ought to have reserved 7 seats in the South Goa Zilla Panchayat instead of 2 seats, which have been reserved for Scheduled Tribes.

5. Mr. Kantak, learned Advocate General relying upon the affidavit filed by Mr. Vinesh V. Arlenkar, who is functioning as Addl. Director of

Panchayat- II and holding additional charge of Director of Panchayats, and more particularly paragraph 5 of the affidavit, has submitted that as per 2001 census, the total population of Scheduled Tribes in the North Goa and South Goa is 118 and 72 respectively. The learned Advocate General further submitted that having regard to the population of Scheduled Tribes in both the Districts, no reservation was warranted in favour of Scheduled Tribes. However, since the Government had reserved 12 % of the posts in service in favour of the Schedule Tribes, the Government thought it fit to reserve 4 seats as against 30 seats, in the North Goa Zilla Panchayat and 2 seats, as against 20 seats, in the South Goa Zilla Panchayat. The learned Advocate General invited our attention to Article 243 (f) of the Constitution, which defines `Population'. The said definition reads as under:

> " "Population" means the population as ascertained at the last preceding census of which the relevant figures have been published".

6. Having regard to the definition of `Population', as defined in Article 243 of the Constitution, it is clear that while making the reservation, regard must be had to last preceding census and that being the position, in the present case, we do not find any infirmity in the decision taken by respondent No.1 in reserving two seats for the South Goa Zilla Panchayat. We find considerable force in the submission of the learned Advocate General that in terms of the last census available, it was not necessary to make reservation for the Scheduled Tribes.

However, in view of the policy adopted by the Government, the Government though it fit to make some reservation for the Scheduled Tribes in the two Zilla Panchayats. We do not find any infirmity in so far as reservation made by the Government in the South Goa Zilla Panchayat, is concerned.

7. We are unable to accept the submission made by learned Counsel Mr. Sardessai that the reservation ought to have been made by the Government on the basis of the survey carried out by the Director of Social Welfare Department.

8. In view of the above, we do not find any merit in the petition and the same is summarily rejected.

A.P. LAVANDE, J.

N.A. BRITTO, J.

ssm.